



DEPARTMENT OF THE ARMY  
JACKSONVILLE DISTRICT CORPS OF ENGINEERS  
POST OFFICE BOX 4970  
JACKSONVILLE, FLORIDA 32232-0019

REPLY TO  
ATTENTION OF

September 13, 2016

Regulatory Division  
North Permits Branch  
Mitigation Bank Team  
SAJ-2010-00413 (ADT)

Mr. David Johnson  
Webster Creek Development, Inc.  
1064 Howell Branch Drive  
Winter Park, Florida 32789

Dear Mr. Johnson:

In accordance with the provisions of the regulations at 33 CFR 332.8(d), the U.S. Army Corps of Engineers (Corps), in consultation with the federal Interagency Review Team (IRT), has completed our review of the proposed compensatory mitigation project as defined within the prospectus received on May 27, 2016. The prospectus provided by your agent, Bio-Tech Consulting, Inc., outlined the establishment of a wetland mitigation bank referred to as the Webster Creek Mitigation Bank (WCMB). The evaluation process included a thorough review of the prospectus, posting of a public notice (PN) on the Corps' Jacksonville District Regulatory web page on June 23, 2016, and an IRT site inspection conducted on July 15, 2016. In response to a request for an extension of the PN comment period, on July 22, 2016, the Corps provided for an additional 30 days for the public to submit comments on the proposed project. The application has been assigned file number SAJ-2010-00413. Please reference this number in all communications regarding this project.

The proposed WCMB project, encompassing 314.87 acres, is located approximately 7.5 miles south of Ponce Inlet and directly east of the Intracoastal Waterway. More specifically, the proposed project is located in Sections 5 and 6, Township 18 south, Range 35 east; in Volusia County, near New Smyrna Beach, Florida.

The stated goal of the WCMB is to restore the endemic wetlands and to support upland vegetative communities and wildlife that originally existed within the property limits. As described in the submitted prospectus, the proposed mitigation plan includes the following activities: preservation of 202.15 acres of high quality mangrove swamp and salt marsh; enhancement of 0.09 acres of upland habitat; enhancement of 101.94 acres of wetlands that have been altered by the creation of mosquito control ditches; and, restoration of 10.68 acres of open drainage ways to mangrove swamp through the placement of upland spoil material in the drainage ways.

The Corps, in consultation with the IRT, has thoroughly reviewed your proposal and offers the following comments/concerns:

1. Information received in response to the PN has raised questions regarding ownership of a significant portion of the proposed WCMB property.

a. A review of the information provided at the Volusia County Property Appraiser's web site indicates that Webster Creek Development, Inc., owns 147.89 acres within the proposed mitigation bank boundaries. Some of the lands included within the proposed mitigation bank boundaries appear to be in ownership of the State of Florida Board of Trustees of the Internal Improvement Trust Fund (TIITF). Of the TIITF lands, 27.77 acres were previously restored by the St. Johns River Water Management District and are covered by an existing conservation easement.

b. The Corps has also received information that the Florida Department of Environmental Protection is currently reviewing the site to determine the mean high water elevation contour in order to determine if portions of the property are owned by the Sponsor or are state sovereign submerged lands.

c. Through the public review process, a number of adjoining property owners have asserted that their property deeds include areas of the proposed mitigation bank between Webster Creek and their residences. Additionally, they are concerned any material placed in the drainage ways could have significant adverse effects on the lagoon, wildlife, and fishing industry within the area.

d. Hydroblasting has been proposed as the preferred method to place spoil material in the drainage ways. This method could exacerbate the mixing of any chemical particles in the water within the lagoon.

2. The Corps and IRT have concerns regarding the potential for direct impacts to existing mangrove swamp, salt marsh, and oyster reefs within the proposed mitigation bank which may result from the proposed mitigation activities. The prospectus did not provide adequate information to ensure that existing communities will be protected during project implementation. The prospectus lacked sufficient information to determine if the proposed activities will provide appropriate habitat conditions necessary to achieve successful restoration.

In consideration of the information provided above, the Corps has determined that the project, as proposed, does not have the potential to provide sufficient compensatory mitigation to compensate for unavoidable impacts to waters of the United States. In order to fully evaluate a proposed mitigation bank, we must have assurance that the



Sponsor either owns property or has a fully binding agreement to utilize the property. Additionally, we must ensure that a proposed mitigation bank will not cause adverse effects on the environment or the public. We regret that the determination is unfavorable regarding utilization of the property as a mitigation bank. Please be advised that as of the date of this letter, the Corps has ended its review of your Prospectus for the WCMB, and your request has been withdrawn.

If you feel that you can address the issues raised and would like to have the proposed WCMB re-evaluated, you will need to provide a new prospectus. The new prospectus must fully address the property ownership issues, should include a Phase I and, if needed, a Phase II Environmental Site Assessment to determine the presence or absence of HTRW within the project boundaries and should include topographic surveys of the areas to be physically manipulated to ensure that spoil is removed and that drainage ways are filled to appropriate elevations which would support the target habitats.

Should you have any questions or if additional information or assistance is required concerning this matter, you may contact Ms. Amy Thompson in writing at the letterhead address, by electronic mail at Amy.D.Thompson@usace.army.mil, or by telephone at 904-232-3974.

Sincerely,



for Donald W. Kinard  
Chief, Regulatory Division

cc:

Mr. John Lesman, Bio-Tech Consulting, Inc., jlesman@bio-techconsulting.com  
Mr. Ron Miedema, U.S. Environmental Protection Agency, Miedema.Ron@epa.gov  
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